MULTIMEDIA UNIVERSITY STUDENT IDENTIFICATION NO

MULTIMEDIA UNIVERSITY
FINAL EXAMINATION

TRIMESTER 3, 2017/2018

UAD 2612 – ALTERNATIVE DISPUTE RESOLUTION

(All Sections/Groups)

5 JUNE 2018

Reading Time : 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time : 9.15 a.m. – 12. 15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes. ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the question.
2. This Question paper consists of 3 Pages and 5 Questions only.
3. Answer **FOUR (4) Questions Only**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the examination hall a CLEAN and ORIGINAL copy of:
   i. Arbitration Act 2005 (Act 646)
   ii. Arbitration (Amendment) Act A1395
   iii. Holy Quran (Translation)
5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

"The field of mediation has grown enormously over the past decades in the US, Europe, South America, Africa and now, Asia is ready to take some big steps forward as well. We have seen mediation used to lower the incidents of school violence and bullying, bring together many different sides in contentious community and tribal disputes, resolve international commercial conflicts, allow labour unions and enterprises to settle differences and avoid strikes and begin constructive dialogue between parties who have been enemies for generations. What can we do to raise mediation's visibility, so it will be seen a universal life skill and core value? "– Keynote Address from the 8th Asia Pacific Mediation Forum, November 11, 2017.

Discuss the common factors that have made mediation a popular alternative dispute resolution in the US, Europe, South America, Africa and Asia. In your opinion, do you see similar mediation initiatives being embraced by the authority and other legal fraternities in Malaysia?

(Total: 25 marks)

QUESTION 2

Mediation is a collaborative process which provides the opportunity to resolve disputes by negotiation and agreement, using the assistance of a Mediator who is a neutral party. The Practice Direction No. 4 of 2016, dated 30 June 2016, entitled "Practice Direction on Mediation" took effect on 15 July 2016 where the Chief Justice of Malaysia hereby directs all Judges of the High Court and its Deputy Registrars and all Judges of the Sessions Court and Magistrates and their Assistant Registrars may, at the pre-trial case management stage as stipulated under Order 34 Rule 2 of Rules of High Court 2012, give such directions that the parties facilitate the settlement of the matter before the court by way of mediation.

Critically discuss the scope and application of mediation as directed by the Practice Direction No. 4 of 2016.

(Total: 25 marks)

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QUESTION 3

In *Twin Applied (M) Sdn. Bhd. V Polar Electro Europe BV* [2013] 3 CLJ 294, Chew Soo Ho JC (as he was then) stated that:

"Section 3 of the Act, which provides that the Act is applicable to domestic or international arbitrations if the seat of arbitration is in Malaysia, is a general provision that does not affect the special provisions in ss. 38 and 39, which specifically provide for the recognition and enforcement of domestic as well as international arbitral awards. The maxim *generalia specialibus non derogant* is aptly applicable to this case and ss. 38 and 39 of the Act must be read as an exception to s.3 of the Act. Thus, for an arbitral award where the seat is outside Malaysia, s. 3 of the Act could unless the provisions of the Act, as such ss. 38 and 39, specifically provide otherwise".

Discuss the extent of court intervention in the arbitration proceeding as provided by the Arbitration Act 2005 (Act 646). In your opinion, does such concept may be in abhorrent to the concept of party autonomy which has been much emphasized also under the same Act which makes it a corner-stone of its arbitral philosophy. Support your answer with decided cases.

(Total: 25 marks)

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QUESTION 4

In *Ajwa For Food Industries Co (MIGOP) Egypt v Pacific Inter- link Sdn Bhd* [2013] 7 CLJ 18, Zulkefli Makinudin CJ (Malaya) observed that:

"(2) It is common knowledge that international agreements between parties doing business from different parts of the world ranging especially in international sales of goods and charter parties are concluded and performed without the need for signatures, so long as the parties had agreed on the terms. Likewise, the sales contracts which set out the agreed terms, despite the lack of signature were valid and enforceable contracts (*Baker v. Yorkshire and Life Assurance Company*; refd)".

In light of the above, discuss the requirements of arbitration agreement under the Arbitration Act 2005 (Act 646) in order to assert a claim that the parties have agreed to submit to arbitration all or certain disputes which may have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Support your answer with decided cases.

(Total: 25 marks)

QUESTION 5

"*If you fear a breach between them twain, appoint (two) arbitrators, one from his family and the other from hers: if they wish for peace Allah will cause their conciliation for Allah hath full knowledge and is acquainted with all things*" – *Surah An- Nisa*: 35

Critically compare and contrast the application of sulh and tahkim in the settlement of conflict among its followers under the Islamic alternative dispute resolution. Support your answer with relevant *Quranic* injunctions and opinions of the jurists.

(Total: 25 marks)

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